

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELIZABETH HORTON,

Ms. Horton,

vs.

DON WILLIAMS, et al.,

Williams.

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CASE NO. 02:06-CV-00526-MHT-DRB

MOTION TO SUBSTITUTE CORRECTED AFFIDAVIT

Comes now the Defendant, Gerald Shockley, by and through counsel, Troy King, Attorney General of Alabama, to file this motion to substitute Mike Roeder's corrected affidavit, attached to this motion as Exhibit B, for his original affidavit which was filed by Defendants Williams and National Seating & Mobility, Inc. ("NSM") and adopted by the other defendants.

1. Mike Roeder is a witness in this case. As a Special Agent of the Attorney General's Office, he participated in the investigation of the allegations of fraud made by the Plaintiff that are at the heart of this civil action. During the investigation, he met with the Plaintiff to interview her.

2. Defendants Williams and NSM submitted Roeder's affidavit as Document 69, Exhibit G.

3. Roeder has since come forth to state that there is an error in Paragraph 7 of his affidavit and that he wishes to correct said error. He states in his affidavit filed in support of this motion (Exhibit A) that the statement contained in Paragraph 7, "She placed a check mark next to 37 names, which she recognized but could not say had been fraudulently billed" is incorrect and should not have been in the affidavit.

4. In his affidavit (Exhibit A) filed in support of this motion, Roeder testifies that the Plaintiff told him in an interview on April 15, 2005 that she was aware of numerous occasions when Medicaid was billed for wheelchairs and other items that were not delivered by National Seating & Mobility. Roeder presented the Plaintiff with the detailed listing of billings to Medicaid from National Seating and Mobility for October 1, 2003 through December 31, 2005, which is referenced in Paragraph 7 of the original affidavit. The Plaintiff reviewed the list and placed check marks by the names of the individuals that she knew did not receive their wheelchair and that Medicaid had been billed by NSM.

4. In Paragraph 5 of his original affidavit, Document 69, Exhibit G, Roeder stated that the contents of Gerald Shockley's notes of investigation, Document 69, Exhibit E, pages 5 and 6 of 15 are true and correct. Indeed, the first of the two pages of Shockley's notes bears Roeder's signature to attest to the accuracy of the notes. If the notes are accurate, then a fair reading of the notes contained in Document 69, Exhibit E contradicts the statement in Paragraph 7 of Roeder's affidavit which states, "She placed a check mark next to 37 names, which she recognized but which she could not say had been fraudulently billed" and thus supports the granting of this motion.

5. The original Roeder affidavit was filed on behalf of Defendants Williams and NSM. Counsel has discussed this matter with counsel for Defendant Williams and for Defendant NSM.

6. Roeder executed a corrected affidavit which is attached as Exhibit B to this motion.

Wherefore, the premises shown, Defendant Gerald Shockley moves that this Honorable Court allow the substitution of the Corrected Affidavit of Mike Roeder, attached to this motion as Exhibit B, for his original affidavit which is filed as Document 69, Exhibit G.

Respectfully submitted on this the 21st day of August, 2008.

TROY KING
ATTORNEY GENERAL

/s/ Jack Wallace, Jr.
Jack Wallace, Jr.
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I have, this the 21st day of August, 2008, electronically filed the foregoing with the Clerk of Court using the CM/ECF. The Clerk of Court using the CM/ECF system will send notification of this filing to the following:

Deborah M. Nickson
Attorney at Law

William O. Butler, III
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Charles Stewart, III
Laura Domm Taaffe
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/s/ Jack Wallace, Jr.
Jack Wallace, Jr.